89-1310

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1989

PATRICK T. REID,
Petitioner

-vs-

WHITE MOTOR CORPORATION and JOHN T. GRIGSBY, JR.,
Disposition Assets Trustee of White Motor Corporation,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

I. At what point in time, if any, is a person seeking to file a class proof of claim in a bankruptcy case required to seek the bankruptcy court's authority to certify the class of claimants, and apply Bankruptcy Rule 7023 and F.R.Civ.P., Rule 23 to determine whether the class can be certified?

II. Must a person filing a class proof of claim file a disclosure statement complying with the provisions of Bankruptcy Rule 2019, and does the failure to file the Bankruptcy Rule 2019 disclosure statement constitute grounds for the disallowance of the class proof of claim?

III. Must a person filing a class proof of claim obtain special authority from the class members to file the bankruptcy proof of claim on their behalf before or after the filing of a class proof of claim, or can the bankruptcy court's certification of the class provide the necessary authority?

IV. If a person filing a class proof of claim must obtain actual authority from the class members to file a proof of claim on their behalf, can the certification of the class of claimants as plaintiffs in a prior proceeding suffice as authority for the filing of a bankruptcy proof of claim?

V. Did the Bankruptcy Court below abuse its discretion by refusing to allow the Petitioner to amend his proof of claim to comply with the procedural requirements for the filing of class proofs of claim?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioner, Patrick T. Reid, respectfully requests that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit entered on September 28, 1989.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 886 F.2d 1462 (6th Cir. 1989). It also appears in the separate Appendix hereto at p. A-4. The Court of Appeals' Order Denying Petition for Rehearing is not reported and is reprinted at A-1. The opinion of the District Court is reported at 65 Bankr. 383 and is also reprinted at A-26. The opinion of the Bankruptcy Court granting summary judgment against the Petitioner is unreported and appears in the Appendix at A-42. The opinion of the Bankruptcy Court denying the Petitioner's post-trial motions is unreported and appears in the Appendix at A-46.

JURISDICTION

The judgment of the Court of Appeals was entered on September 28, 1989. On October 12, 1989, the Petitioner filed with the Court of Appeals below his Petition for Rehearing and Suggestion for Rehearing En Banc. The Court of Appeals entered its Order Denying Petition for Rehearing En Banc on November 12, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES, FEDERAL RULES OF CIVIL PROCEDURE AND BANKRUPTCY RULES INVOLVED

This action involves the application of 11 U.S.C. § 502, FED.R.CIV.P. 23, Bankruptcy Rule 2019, Bankruptcy Rule 7023, and Bankruptcy Rule 9014, all of which are reprinted in the Appendix beginning at p. A-48.

STATEMENT OF THE CASE

This case is presently before the Court because the Bankruptcy Court for the Northern District of Ohio disallowed the bankruptcy Proof of Claim of the Petitioner, Patrick Reid ("Reid") in the Chapter 11 Bankruptcy case of White Motor Corporation (the "Debtor"). The Amended Proof of Claim, in the amount of $3,033,515.67, was filed by Reid, an attorney, on behalf of 264 former employees of the Debtor at its Diamond REO Truck plant located in Lansing, Michigan.

The Debtor is a manufacturer of large trucks. At the time it filed its Chapter 11 bankruptcy petition in the Ohio Bankruptcy Court on September 4, 1980, the Debtor's bankruptcy case was one of the largest ever filed in Ohio.

The claims of the individual employees represented by Reid arose from the sale of White Motor's Diamond REO Truck Division to Diamond Reo Truck, Inc. (the "Purchaser") in 1971. After the sale, all of these employees were terminated. Although Diamond Reo Truck, Inc. assumed all of the liabilities of White Motor's Diamond Reo Truck Division, the Purchaser filed its own bankruptcy petition in the Bankruptcy Court for the Western District of Michigan shortly after the sale.

After the sale of the Debtor's Diamond Reo Division, but before the Purchaser filed its own bankruptcy petition, Reid represented the individual employees in a class action lawsuit in Michigan state court, where the former employees were certified by the state court as a plaintiff class. The employees that were represented by Reid affirmatively opted into the plaintiff class in the Michigan state court litigation, as was required by the applicable Michigan Court Rule, GCR 208 (1963).

The $3,033,515.67 claim filed by Reid is based upon the contractual severence pay owned by the Debtor to the 264 former employees of the Debtor's Diamond Reo Truck Division. Reid filed the initial Proof of Claim on September 1, 1981, at a very early stage of the in the Debtor's Bankruptcy Case. Reid's initial bankruptcy Proof of Claim was typed on the standard proof of

claim form used by the Ohio Bankruptcy Court. The Proof of Claim explicitly stated that Reid "is the agent of all Class Members of a certain class action filed in the Ingham County Circuit Court, File No. 77-19932-CK, and is authorized to make this Proof of Claim on behalf of Claimant." Attached to the Proof of Claim were eight pages listing the names of the former employees of the Debtor's Diamond REO Truck Division represented by Reid in the state court class action lawsuit, along with the amount claimed by each employee. The attachments to the Proof of Claim indicated that the claims of the individual employees arose on account of "severence pay." The total amount of the employees' claims at the time the initial Proof of Claim was filed, $1,743,233.05, is explicitly indicated on the face of the Proof of Claim, and is equal to the total of the specific amounts per employee set out in the attachments.

On June 29, 1982, Reid filed his First Amended Proof of Claim in the Ohio Bankruptcy Court, to amend and clarify the initial Proof of Claim filed on September 1, 1981. The First Amended Proof of Claim explicitly indicated on its face that the employees' claims arose on account of "severence pay," and, like the initial Proof of Claim, the First Amended Proof of Claim listed, on attachments, the employees that asserted severence pay claims, as well as the amount claimed by each employee. The amount claimed by each employee was somewhat higher than the amount claimed in the initial Proof of Claim, and the higher total, $3,033,515.67, was again explicitly shown on the face of the First Amended Proof of Claim.

None of the employees listed on Reid's Proof of Claim or his First Amended Proof of Claim filed an individual proof of claim on his own behalf in the Debtor's bankruptcy case.

The Bankruptcy Court below entered an order setting August 30, 1983 as the bar date for filing proofs of claim. Both Reid's September 1, 1981 Proof of Claim and his June 29, 1982 First Amended Proof of Claim were filed many months before the August 30, 1983 bar date. Neither the Debtor nor the bankruptcy trustee appointed by the Court, John T. Grigsby, Jr. (the "Trus-

tee"), objected to the form or content of the Proof of Claim or the First Amended Proof of Claim (both of which together are referred to hereafter as the "Proof of Claim," or "Claim No. 188".) until just after the expiration of the bar date. The Trustee's Objection to Claim No. 188 was filed on September 20, 1983.

The Trustee moved for summary judgment to disallow the Proof of Claim on the grounds that the Proof of Claim was, in the Trustee's view, an impermissable attempt to file a "class claim." According to the Trustee, because the Debtor's former employees had not acted to certify their claims as a class claim in the Bankruptcy Court before the time that the Trustee filed his objections to the claim, they were forever barred from asserting their claims at all in the Debtor's bankruptcy case.

On June 20, 1985, the Bankruptcy Court below entered its Order granting the Trustee's Motion for Summary Judgment.[1] Specifically, the Bankruptcy Court held that "class actions [are] inappropriate to claim proceedings." (Appendix, p. A-43). The Bankruptcy Court declined to order Bankruptcy Rule 7023 (governing class actions in the Bankruptcy Court) applicable to the Proof of Claim because class actions are "generally disfavor[ed]" in bankruptcy courts, and because Reid did not seek the application of Bankruptcy Rule 7023 to the Proof of Claim before the Proof of Claim was filed. (Appendix, pp. A-43-A-44). As a result, the Bankruptcy Court disallowed the Proof of Claim altogether.

Reid filed his Motion for Reconsideration of the Bankruptcy Court's Order granting summary judgment on July 22, 1985, as well as a Motion to Consider Claim Properly Filed by Individual Claimants, or to Permit Amendment of Claim, or to File Tardy Claims. Reid also filed at the same time a separate Motion Under Bankruptcy Rule 9014 to Apply Part VII of the Bankruptcy Rules in This Contested Matter, which sought specifically to apply FED.R.CIV.P. 23, governing class actions, to the Proof of Claim.

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[1] The Bankruptcy Court's federal jurisdiction to consider the disallowance of the Proof of Claim was based upon 11 U.S.C. § 1334 and 11 U.S.C. § 157(b)(2)(B).

On September 11, 1985, the Bankruptcy Court entered its Order rejecting all of the relief requested in Reid's July 22, 1985 motions. The Bankruptcy Court denied Reid's Motion for Reconsideration on the grounds that the Motion raised only arguments that were already raised in response to the Trustee's Motion for Summary Judgment. (Appendix, p. A-46). The Bankruptcy Court denied the Motion to Consider Claim Properly Filed on the grounds that "class actions cannot be maintained to circumvent the requirement of filing individual claims." (Appendix, p. A-47). Further, the Bankruptcy Court held that it could not allow the Proof of Claim to be amended to conform to the individual claims requirement because, after the Trustee's Motion for Summary Judgment was granted, there was no claim left to amend, and any order allowing such an amendment would be "inoperative." (Appendix, p. A-47).

On September 20, 1985, Reid filed his Notice of Appeal whereby he sought to appeal to the District Court the Bankruptcy Court's orders granting the Trustee's motion for summary judgment and denying Reid's post-judgment motions. The District Court dismissed Reid's appeal of the Bankruptcy Court's Order granting the Trustee's motion for summary judgment on the grounds (subsequently reversed by the Court of Appeals) that Reid's Notice of Appeal was untimely. (Appendix, pp. A-36-A-37). Thus, the District Court did not consider the merits of the Bankruptcy Court's Order granting summary judgment. The District Court further found that the Bankruptcy Court had not abused its discretion in denying the Motions filed by Reid after the Trustee's Motion for Summary Judgment was granted. (Appendix, pp. A-37-A-41). Reid appealed the District Court's Judgment to the Court of Appeals for the Sixth Circuit on November 25, 1987.

The Court of Appeals reversed many of the legal conclusions reached by both the Bankruptcy Court and District Court below. For one thing, the Court of Appeals found that Reid's appeal of the Bankruptcy Court's Order granting the Trustee's Motion for Summary Judgment was timely. (Appendix, p. A-16).

More importantly though, the Court of Appeals rejected the Bankruptcy Court's principal reason for disallowing the Proof of Claim. The decision of the Court of Appeals announced for the first time in the Sixth Circuit that a class proof of claim is permissible under certain circumstances in bankruptcy cases. (Appendix, pp. A-17-A-20). After reaching this watershed decision, however, the Court of Appeals held that the Bankruptcy Court below did not, in any event, abuse its discretion in disallowing the class proof of claim filed by Reid. The Court of Appeals held that Reid failed to comply with the following prerequisites to the Bankruptcy Court's applying Bankruptcy Rule 7023 to the Reid Proof of claim and certifying the class of claimants:

> A) Reid failed to file a timely motion with the Bankruptcy Court, pursuant to Bankruptcy Rule 9014, to request the Bankruptcy Court to apply Bankruptcy Rule 7023 to the Reid proof of claim and certify the class of persons claiming through the Reid proof of claim;
>
> B) Reid failed to file a statement that strictly met the requirements of Bankruptcy Rule 2019, disclosing his representation of more than one creditor in the bankruptcy case;
>
> C) Reid did not prove that he was actually authorized by the class members or under applicable law to file a proof of claim on their behalf; and
>
> D) Reid did not sufficiently identify the class. (Appendix, pp. A-21-A-23).

REASONS FOR GRANTING THE WRIT

Because of the importance of the Court of Appeals' decision allowing class proofs of claim for the first time in bankruptcy proceedings, it is extremely important that the Court provide proper guidance to courts in all Circuits and to practitioners as to precisely what procedure must be followed by class claimants in

order to avoid having future class claims disallowed on mere technical grounds, as has happened in the instant case.

Further, the Court of Appeals' disposition of the class proof of claim in the instant case on the grounds that Reid failed to comply with the procedural requirements of Bankruptcy Rules 2019, 7023, and 9014 directly conflicts with the interpretation given these Bankruptcy Rules by the two other Courts of Appeals which have found that class proofs of claim are allowable in bankruptcy cases. *See, In re Charter Co.*, 876 F.2d 866 (11th Cir. 1989); *Matter of American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988). The Court should note that these two cases, together with the opinion of the Court of Appeals for the Sixth Circuit below, are the only opinions at the Circuit Court level which have determined that class proofs of claim may be filed in bankruptcy cases. These three opinions stand in conflict with the decision of the Court of Appeals for the Tenth Circuit in *In re Standard Metals Corp.*, 817 F.2d 625 (10th Cir. 1987), vacated in part on rehearing and decided on other grounds, *sub nom Sheftelman v. Standard Metals Corp.*, 839 F.2d 1383 (10th Cir. 1987). In *Standard Metals*, the Tenth Circuit declared that class proofs of claim can never be allowed in bankruptcy cases to supplant the supposed requirement that individual claims be filed by creditors. *Standard Metals*, 817 F.2d, at 632.

Before these very recent opinions by the Sixth, Seventh, Tenth, and Eleventh Circuit Courts of Appeals, the case law in the various bankruptcy and district courts almost invariably disallowed class proofs of claim. Because the allowance of class proofs of claim in bankruptcy cases has only very recently been sanctioned, and because there is a conflict between the Court of Appeals for the Sixth Circuit below and the Courts of Appeals for the Eleventh Circuit and Seventh Circuit as to the procedural requirements that must be followed in order to permit the allowance of a class proof of claim, the instant case would provide the Court with an excellent opportunity to settle the conflict between the Circuits and to provide necessary procedural guidance to the courts below and to practitioners alike.

As matters now stand, three Courts of Appeals, the Sixth Circuit below and the Seventh and Eleventh Circuits, have held that class proofs of claim are now permissible in bankruptcy cases. One Court of Appeals, the Tenth Circuit, has taken a contrary position. Practitioners and the lower courts in the remaining circuits must somehow determine on their own, on a case by case basis, whether class proofs of claim will be authorized. This *ad hoc* adjudication will be difficult for courts, considering the conflict between the Circuit Courts that have considered the issue, and extremely risky for practitioners and individual creditors, in the absence of some indication by this Court that such class proofs of claim are or are not permissible. The risks involved are amply demonstrated by the severe treatment meted out to the individual employees in the instant case, whose valid claims have been summarily disallowed by the courts below without any examination of their substantive merit.

Bankruptcy cases have in recent years become increasingly large and complex, often including individual creditors numbering in the thousands. With the increased use of high-risk corporate refinancing and restructuring during the past decade, the bankruptcy courts can expect to see many more enormous cases such as the White Motor bankruptcy involved here. In light of this trend, some method whereby the bankruptcy courts can adjudicate extremely large numbers of claims efficiently has become both necessary and inevitable. The class proof of claim is one method of streamlining the procedure. Even if efficiency in itself was not reason enough to sanction class proofs of claim, there are many other reasons why they have inevitably been allowed in bankruptcy cases. *See generally American Reserve,* 840 F.2d, at 489-492.

If the class proof of claim is to be used widely to advantage in bankruptcy cases, the Court should articulate the procedural requirements that must be met. The Court of Appeals below disallowed the class Proof of Claim in the instant case because, among other reasons, Reid did not seek the application of Bankruptcy Rule 7023 and class certification of the claims before the

proof of claim was filed and because Reid did not file a Bankruptcy Rule 2019 disclosure statement setting out the details of his representation of the individual creditors. As set out more completely in the discussion that follows, these requirements have been rejected by the other Courts of Appeals that have sanctioned the use of class proofs of claim. To require the certification of the class before the proof of claim can even be filed would remove the efficiency of the claims procedure as it presently exists. Under Section 502(a) of the Bankruptcy Code, 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless objection is made. Conceivably, class certification need never be addressed at all unless an objection is made. *See Charter,* 876 F.2d, at 873-875. The second requirement, that the class representative file a Bankruptcy Rule 2019 disclosure statement, is impossible to meet where a true class proof of claim is contemplated. *American Reserve,* 840 F.2d, at 493. This being the case, class proofs of claim will always be disallowed, or risk being disallowed, unless this Court reverses the opinion of the Court of Appeals below.

In summary, the opinion of the Court of Appeals below, and its conflict with the decisions of the Courts of Appeals for the Seventh Circuit and Eleventh Circuit, has introduced so much uncertainty and risk into the newly sanctioned practice of filing class proofs of claim in bankruptcy cases, that this procedure, despite its many merits, will languish unused. If this Court agrees with the majority of the Courts of Appeals that the bankruptcy class claims procedure should be allowed, then it should issue a writ of certiorari to the Court of Appeals and review its opinion.

I. THE COURT OF APPEALS' DETERMINATION THAT REID'S MOTION IN THE BANKRUPTCY COURT TO APPLY BANKRUPTCY RULE 7023 TO THE REID PROOF OF CLAIM WAS NOT TIMELY IS ERRONEOUS, CONFLICTS WITH THE DECISION OF THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, AND IS OTHERWISE BASED UPON THE COURT OF APPEALS' MISAPPREHENSION OF THE APPLICABLE STANDARDS THAT SHOULD GUIDE THE BANKRUPTCY COURT'S DECISION WHETHER TO APPLY BANKRUPTCY RULE 7023.

The opinion of the Court of Appeals states that "Rule 9014 authorizes bankruptcy judges, within their discretion, to invoke Rule 7023, and thereby, Fed.R.Civ.P. 23, the class action rule, to 'any stage' in contested matters, including, class proofs of claim." (Appendix, p. A-18). However, the Court of Appeals inexplicably went on to hold that the Bankruptcy Court below properly exercised its discretion not to apply Bankruptcy Rule 7023 to the Proof of Claim because Reid's motion to apply Bankruptcy Rule 7023 in the Bankruptcy Court below was untimely. (Appendix, p. A-21).

The Court of Appeals' analysis is erroneous, in the first place, because it disregarded and contradicted the unambiguous language of Bankruptcy Rule 9014 (Emphasis added):

> Rule 9014.
>
> CONTESTED MATTERS
>
> In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the

> following rules shall apply: 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7062, 7064, 7069, and 7071. **The court may *at any stage in a particular matter* direct that one or more of the other rules in Part VII shall apply.** An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order.

In light of the language in the Bankruptcy Rule that the Court may apply Part VII Bankruptcy Rules "at any stage in a particular matter," it was a clear abuse of discretion for the Bankruptcy Court to find Reid's motion to apply Bankruptcy Rule 7023 in the instant case untimely.

The Court of Appeals' opinion gives no guidance as to when such a motion must be filed other than to say that it was late in the instant case. The Bankruptcy Court, however, stated that it exercised its discretion not to apply Bankruptcy Rule 7023 to the class Proof of Claim because "Reid failed to timely [sic] request authorization **prior to filing the class proof of claim."** (Appendix, pp. A-43-A-44) (Emphasis added). This reasoning, apparently endorsed by the Court of Appeals below, violates the plain language of Bankruptcy Rule 9014 that a motion to apply the class action Bankruptcy Rule can only be made after a contested matter is established by the filing of an objection to a proof of claim, and stands in direct conflict to the better reasoned position adopted by the Eleventh Circuit Court of Appeals.

The Eleventh Circuit held in the *Charter* case that a motion to apply Bankruptcy Rules 9014 and 7023 to a class claim can be filed by the class claimant **only after there has been an objection to the proof of claim:**

> The procedures governing the incorporation of Rule 23 into bankruptcy proceedings are contained in the Bankruptcy Rules. Rule 23 may be invoked in two circumstances: in an adversary proceeding and in a contested matter. Pursuant to the terms of Bankruptcy Rule 7023, Rule 23 applies in any adversary proceeding. Also, under Bankruptcy Rule 9014, the bankruptcy judge may at his discretion apply Bankruptcy Rule 7023, and by extension Rule 23, in a contested matter. . . .
>
> The filing of a proof of claim and the debtor's objection thereto do not constitute an adversary proceeding, and therefore this avenue for invoking Rule 23 was not available to the appellants. However, when an objection is made to a filed proof of claim, a contested matter arises. . . . Therefore, absent an adversary proceeding, **the first opportunity a claimant has to move under Bankruptcy Rule 9014, to request application of Bankruptcy Rule 7023, occurs when an objection is made to a proof of claim. Prior to that time, invocation of Rule 23 procedures would not be ripe, because there is neither an adversary proceeding nor a contested matter.**
>
> Here, the appellants complied with the above-described procedures. Their claim was filed within the bar date. Once filed, it was "deemed allowed," until objected to. 11 U.S.C. § 502(a). No objection was made to the claim for almost two years; once objection was made, the appellants promptly moved under Bankruptcy Rule 9014 to invoke Bankruptcy Rule 7023. **The Bankruptcy Rules impose no time requirement with respect to filing a motion for application of Bankruptcy Rule 7023;** indeed, the Code contains no other instance where a claimant must perfect a claim prior to objection. Thus, we conclude that there was no undue delay here.

Charter, 876 F.2d, at 873-875 (citations omitted) (emphasis added).

In two more recent decisions, district courts in both the Second and Third Circuit have adopted the broad view announced by the Eleventh Circuit in *Charter,* and have held that the class claimant may file a class proof of claim first and then seek the application of Bankruptcy Rule 7023, incorporating FED.R.CIV.P. 23, to certify the class of claimants at some later stage of the proceedings. *See, e.g., In re Zenith Laboratories, Inc.,* 104 Bankr. 659, 664 (D.D.N.J. 1989); *In re Chateaugay Corp.,* 104 Bankr. 626, 634 (D.S.D.N.Y. 1989). The holding of the courts below, that Reid was required to seek the application of Bankruptcy Rule 7023 before he filed the Proof of Claim contradicts the unambiguous provisions of Bankruptcy Rule 9014 and is so inconsistent with the better reasoned line of authority developing in the other circuits that the Court should issue a Writ of Certiorari to resolve the conflict on this crucial procedural point.

The Court of Appeals below attempted in vain to distinguish the situation in the instant case from the Eleventh Circuit Court of Appeals' decision in the *Charter* case, in which a motion to apply Bankruptcy Rule 7023 was filed after the claims bar date and after the trustee had objected to the class proof of claim, but before the bankruptcy court had determined the trustee's objection. In the *Charter* case, the Eleventh Circuit held that the motion to apply Bankruptcy Rule 7023 to the class proof of claim was not untimely. *In re Charter Co.,* 876 F.2d 866, 874-875 (11th Cir. 1989). The Eleventh Circuit gave no indication in its opinion, moreover, that a motion to apply Bankruptcy Rule 7023 to the class claim would not be timely still at some later time.

In any event, whether or not Reid filed a "timely" motion to apply Bankruptcy Rule 7023 is was not properly an issue before the Court of Appeals or any of the courts below. The fact of the matter is that the Trustee himself raised the issue in the Bankruptcy Court in his motion for summary judgment. The Trustee asserted that the Bankruptcy Court could not apply Bankruptcy Rule 7023 and certify the class unless Reid himself filed a Motion to apply Bankruptcy Rule 7023. Just as was done by the bankruptcy court in the *Charter* case, the Bankruptcy Court below

considered the issue of whether to apply Bankruptcy Rule 7023 to the Reid proof of claim, albeit on the Trustee's initiative, at the time it granted summary judgment in favor of the Trustee and disallowed the Reid proof of claim. Nothing in Bankruptcy Rule 9014 requires the Court to apply Bankruptcy Rule 7023 to a contested matter only upon the request of the party that filed the proof of claim. The Bankruptcy Court clearly was required to consider the issue once it had been raised by the Trustee. Because the issue was before the Bankruptcy Court at the time it granted summary judgment in favor of the Trustee, the instant case is exactly the same, for all practical purposes, as *Charter*. Accordingly, the Court of Appeals' efforts to distinguish *Charter* are unavailing.

The Court of Appeals also erred in holding that the Bankruptcy Court did not abuse its discretion in declining to apply Bankruptcy Rule 7023 to the class proof of claim. (Appendix p. A-21). Yet it is clear that the Bankruptcy Court's discretion was guided by improper considerations. First, the Bankruptcy Court held that class proofs of claim are generally disfavored in bankruptcy cases. The Court of Appeals below disagreed. (Appendix, p. A-20). The second and only other reason the Bankruptcy Court declined to apply Bankruptcy Rule 7023 is because Reid had not filed a motion to apply Bankruptcy Rule 7023 before the Proof of Claim was filed. As shown above, this reason too was incorrect.

The Bankruptcy Court's discretion should have been guided by the criteria set out in FED.R.CIV.P. 23 for the certification of a class. *Chateaugay,* 104 Bankr., at 634. Because the Bankruptcy Court failed even to address these criteria, the Court of Appeals erred in affirming the Bankruptcy Court's exercise of discretion. *Alexander v. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers,* 565 F.2d 1364, 1372 (6th Cir. 1977); *Gore v. Turner,* 563 F.2d 159, 165-166 (5th Cir. 1978); *Schlater v. Kelley,* 40 Bankr. 594 (Bankr.E.D.Mich. 1984).

In summary, this case provides the Court with an opportunity to determine when a person filing a class proof of claim in a

bankruptcy case must seek the bankruptcy court's authority to apply Bankruptcy Rule 7023 (which incorporates FED.R.CIV.P. 23) to the case, and certify the class of claimants. To resolve the conflict on this point between the Sixth Circuit Court of Appeals below and the courts in the Eleventh, Second, and Third Circuits, the Court should issue a Writ of Certiorari to review the decision of the Court of Appeals in the instant case.

II. THE COURT OF APPEALS' DETERMINATION THAT THE BANKRUPTCY COURT PROPERLY EXERCISED ITS DISCRETION TO DISALLOW THE REID PROOF OF CLAIM ON THE GROUNDS THAT REID FAILED TO COMPLY WITH THE DISCLOSURE REQUIREMENTS OF BANKRUPTCY RULE 2019 IS BOTH ERRONEOUS AND IN DIRECT CONFLICT WITH THE DECISIONS OF THE COURTS OF APPEALS FOR THE SEVENTH AND ELEVENTH CIRCUITS.

The Court of Appeals held that the Bankruptcy Court below did not abuse its discretion in disallowing the Reid Proof of Claim because Reid did not strictly comply with the disclosure requirements set out in Bankruptcy Rule 2019(a). (Appendix, p. A-22).

In contrast, the Seventh Circuit, in *American Reserve,* implicitly recognized that literal compliance with the provisions of Bankruptcy Rule 2019 is **not possible** in the case of a person who files a true class proof of claim. *American Reserve,* 840 F.2d, at 493. Bankruptcy Rule 2019 ordinarily requires an attorney who seeks to represent more than one creditor in a bankruptcy case to identify specifically the creditors whom he represents as well as the circumstances of his representation. However, in the context of a true Rule 23 class action, the class representative cannot comply with these requirements since the identities of the class members are sometimes unknown. Therefore, the class representative will, by his very nature, have no actual authority to represent the unnamed class members, at least not until the class is certified by the court. When the class is actually certified, the

authority to represent unnamed class members comes from the court — not from the unnamed class members. For this reason, the Seventh Circuit has held that the eventual certification by the class by the bankruptcy court fulfills all of the substantive requirements of Bankruptcy Rule 2019, and no separate Rule 2019 statement need be filed. *Id.*

Similarly, the Eleventh Circuit held that the bankruptcy court's certification of the class was all that was necessary to comply with the substantive requirements of Bankruptcy Rule 2019:

> As in *GAC* [*Matter of GAC Corp.*, 681 F.2d 1295 (11th Cir. 1982)], the claimants here did not file a verified disclosure statement pursuant to Bankruptcy Rule 2019(a). The rule requires every entity or committee representing more than one creditor to file a statement disclosing information relating to the nature of the representation. However, Bankruptcy Rule 2019 is satisfied, and the policies behind it are realized, by the certification of a class. *In the Matter of American Reserve Corp.*, 840 F.2d 487, 493 (7th Cir. 1988).

In re Charter Co., 876 F.2d 866, 875 (11th Cir. 1989) (footnote 14).

Just as in the instant case, the class representative in the *Charter* case did not file a Bankruptcy Rule 2019 statement. In that case, the claimant's motion to apply Bankruptcy Rule 7023 and certify the claimant class merely recited that the class in that case (claimants alleging securities laws violations by the debtor) had previously been certified by the district court in pre-bankruptcy securities litigation. The Reid proof of claim in the instant case is no less specific.

The purpose of the disclosure requirements is to ***shield*** innocent creditors from undetected conflicts of interest on the part of the attorney that represents more than one creditor in a

particular bankruptcy case.[2] In light of this legislative purpose, it is ironic that the Bankruptcy Court below utilized Rule 2019 as a ***sword*** to destroy the claims of the very creditors that Bankruptcy Rule 2019 was designed to protect, apparently disregarding the specific remedies provided by Bankruptcy Rule 2019(b)). Rule 2019(b) contemplates discontinuing the representation of creditors in a bankruptcy case if the representation is found to present a conflict of interest. Rule 2019(b) does not contemplate disallowing or destroying the claims of the very creditors that Bankruptcy Rule 2019 was designed to protect. The Court of Appeals has simply misread the purposes of Bankruptcy Rule 2019. Accordingly, this Court should issue a Writ of Certiorari to review the Court of Appeals' opinion and judgment.

III. THE COURT OF APPEALS ERRED IN HOLDING THAT REID WAS NOT AUTHORIZED TO FILE A PROOF OF CLAIM ON BEHALF OF THE DEBTOR'S FORMER EMPLOYEES.

The Court of Appeals majority further erred in holding that the Reid Proof of Claim was properly disallowed because Reid had not presented sufficient proof to the Bankruptcy Court below that he was **actually** authorized to file the proof of claim by and on behalf of the individual class claimants. (Appendix, p. A-42). The Court of Appeals' decision in this regard is contrary to the requirements of Bankruptcy Rule 3001(b). The Trustee produced no evidence to establish that Reid lacked authority to file the Proof of Claim on behalf of the individual employees. "Bankruptcy Rule 3001(b) does not require an attorney acting as agent for a group of creditors to produce proof of agency until evidence controverting the agency has been presented." *In re Great West-*

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[2] Rule 10-211 [the predecessor to Bankruptcy Rule 2019], derived from §§ 209-213 of the [former Bankruptcy] Act is a comprehensive regulation of representation in a Chapter X case. . . . ***The legislative intention was that these powers should be employed wherever necessary to [protect] the rights of the individual investor.***

6 Collier on Bankruptcy (14th Ed.) ¶ 9.28, p. 1730 (citing House Hearings on H.R. 6439, 75th Cong., 1st Sess. (1937), pp. 163-164).

ern Cities, Inc. of New Mexico, 107 Bankr. 116, 120 (D.N.D.Tex. 1989).

Even if the Trustee had produced such evidence, the Bankruptcy Court's grant of summary judgment in favor of the Trustee was nevertheless erroneous because Reid's submitted an affidavit establishing the circumstances of his authority. The courts below overlooked the fact that the members of the class certified in the Michigan state court action had actually "opted in" to the state court class action as required by the Order of the Michigan state Court of Appeals. The employees could reasonably have believed that their affirmative response of "opting in" to the state court class action constituted authorization to Reid, as the attorney for the class, to undertake whatever steps were necessary to preserve their respective claims, including even the filing of a bankruptcy proof of claim. All of these factual issues were raised by Reid in the Bankruptcy Court in his Affidavit in Support of Motions. Accordingly, the Bankruptcy Court abused its discretion in disallowing the Reid proof of claim without at least resolving these factual issues, and it was improper for the Court of Appeals to affirm the Bankruptcy Court's abuse of discretion. *Id.,* at 121.

However, even if the Court of Appeals majority was correct in its determination that Reid was not expressly authorized in fact by the Debtor's former employees to file a proof of claim in the bankruptcy case on their behalf, the Court of Appeals majority erred in holding that such actual express authorization was required in the first place to file the proof of claim on behalf of the class members. As indicated by the Seventh Circuit in the *American Reserve* case, Bankruptcy Rule 7023 authorizes the filing of a **true** class proof of claim **without first obtaining actual authorization to file such a claim from the represented class members:**

> [Bankruptcy] Rule 7023 . . . expressly makes class actions available in adversary proceedings. A class action under Rule 23 is more than permissive joinder — the "spurious class action" under the version of Rule 23 in force between 1938 and 1966. ***A Rule 23 class action is not simply a device***

> ***by which one plaintiff prosecutes the case after many have filed separate suits (or intervened in a pending suit); it is a device by which the representative is an agent for persons who have not appeared or given even tacit consent.*** . . . . If § 501 prevents the class representative from prosecuting the claim on behalf of anyone who failed to file a proof-of-claim form (the equivalent of intervening in the pending bankruptcy case), then there will never be a *Rule 23* class action; there will only be a "spurious class action"; yet Bankruptcy Rule 7023 says that there are to be Rule 23 class actions in bankruptcy.

American Reserve, 840 F.2d, at 493. (citations omitted, emphasis added).

Even if the Court of Appeals is correct in its determination that Reid's express authority to represent the former employees in the Michigan state court class action did not extend to filing a proof of claim on their behalf in the bankruptcy case, then Reid's proof of claim placed him in exactly the same position as the class claimants in both the *American Reserve* case and the *Charter* case, in which the class proofs of claim were allowed. If the Court of Appeals is correct, then Reid's proof of claim constitutes an attempt to commence a brand new class action in the Bankruptcy Court below, and, under the Seventh Circuit's reasoning in *American Reserve,* neither Bankruptcy Rule 7023 nor FED.R.CIV.P. 23 required Reid to obtain actual authority from the purported class members before attempting to commence a class action on their behalf.

Finally, the Court of Appeals' determination that Reid could not file a class proof of claim because he was not a member of the class should also be reconsidered and rejected because Reid's authorization to represent the class representative, Burch, who was in turn authorized by the Michigan state court (and who could likewise have been appointed by the Bankruptcy Court below) to represent the employee class, is all that was needed to file the proof of claim.

To the extent that the Proof of Claim obscured Reid's representation of the named class member or appeared to suggest that Reid himself was the actual claimant, the Bankruptcy Court below should have allowed Reid to amend the proof of claim to reflect this fact, particularly since allowing the amendment would have resulted in no prejudice or inconvenience whatever to the Trustee or to the bankruptcy estate. The Bankruptcy Court's refusal to allow Reid to amend his proof of claim elevated form over substance, and utterly ignored the long series of precedents which liberally allow amendments to proofs of claim. *See, e.g., In re Meade Tool & Die Co.*, 164 F.2d 228 (6th Cir. 1947); *In re Butterworth*, 50 Bankr. 320 (D.W.D.Mich. 1984); *In re Supreme Appliance & Heating Co*, 100 F.Supp. 200 (W.D.Ky. 1951); *In re Midwest Telcproductions Co., Inc.*, 69 Bankr. 675 (Bankr.N.D.Ohio 1987); *In re Key*, 64 Bankr. 786 (Bankr.M.D.Tenn. 1986). The Bankruptcy Court's refusal to allow the amendment consequently constitutes an abuse of discretion.

The Bankruptcy Court's exercise of "discretion" caused approximately 260 former employees of the Debtor to forfeit severance claims amounting to over $3 million. The dissenting opinion of Court of Appeals member, Judge Wellford, properly recognizes that the only proper and equitable procedure would have been for the Bankruptcy Court to allow Reid to amend his proof of claim to comply with any procedural requirements that were not met by Reid.

On February 12, 1981, the examiner appointed in the White Motor case issued his report examining the effect of the Chapter 11 filing on the many former employees of White Motor. Among the findings made by the examiner can be found the following statement which accurately describes the position of the Debtor's former employees represented by Reid:

> Amid the vast number of complex legal and business issues of this case, and the hundreds of millions of dollars at stake, there exists a human element which cannot be over-

> looked. That specific human element is the plight of the employees of WMC [White Motor] who became victims.
>
> Many of WMC's former employees have served faithfully for over thirty (30) years. They range from fifty (50) to almost seventy (70) years of age. They have little prospect, if any, of finding new employment. Many took early retirement — some on their own initiative but most at the suggestion of WMC. Most relied upon their accumulated severance pay to carry them through to the time they became eligible for retirement benefits. (Examiner's Report, p. 1).

Belittling the seriousness of the claims to the hundreds of employees at stake here, the Trustee challenged the Reid Proof of Claim only on the basis of procedural irregularities which could easily have been cured if Reid had been given the usual opportunity to amend the Proof of Claim. The courts below have treated this case as a mere procedural exercise without taking into consideration at all the nature of the claims involved. None of the Courts below addressed the merits of the claims. Instead, the employees' claims were disallowed on the basis of technicalities and through the exercise of "discretion." The employees represented by Reid were terminated by the Debtor. Their earned severence pay will never be paid unless this Court reverses the decision of the Court of Appeals below.

With all due respect to the courts below, equity has not been applied here. As suggested by the dissent of Judge Wellford in the Court of Appeals below (Appendix, p. A-24), the Bankruptcy Court should have exercised its discretion to allow Reid simply to amend the Proof of Claim.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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